



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201113047

JAN 5 2011

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

T!EP: RA!T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount E = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Company F = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Company B = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Date G = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Date L = XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Year H = XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxx, submitted on your behalf by your authorized representative, as supplemented by a facsimile dated xxxxxxxxxx, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A represents that he received a distribution from IRA X totaling Amount D in error. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error committed by Company F. Taxpayer A further asserts that Amount D has not been used for

any other purpose and the check for the distributions has not been cashed and remains in Taxpayer A's possession.

Taxpayer A, age 58, maintains IRA X, a traditional Individual retirement arrangement (IRA) with Company F. In Year H, Taxpayer A began receiving from IRA X one payment of Amount E per month, an arrangement that was intended to satisfy the requirements of Code section 72(t)(2)(A)(iv) as a series of substantially equal periodic payments. Payments were made on the first of each month.

Taxpayer A represents that on Date G, Company F made certain distributions in error that caused Taxpayer A's distributions for year 2009 to be in excess of the substantially equal amount. Taxpayer A asserts that he did not intend to receive the additional distribution in excess of the substantially equal periodic payment amount.

Taxpayer A further asserts that he attempted to return the distributions of Amount D to Company F but Company F would not take back the distribution.

Taxpayer A states that this error on the part of Company F was not discovered until January 25, 2010 when he contacted his accountant for advice and at that time, the 60-day rollover period provided under Code section 408(d)(3) had expired.

In a facsimile dated xxxxxxxxxxxxxxxx, Taxpayer A states that he repeatedly attempted to return the funds but Company F would not accept them back. Taxpayer A asserts that he did not know that he could roll the funds back into the account and that Company F did not provide that information to him. Taxpayer A further asserts that Company F will not provide any kind of letter but Company F has offered to corroborate Taxpayer A's account by telephone.

Taxpayer A represents that he retained the checks uncashed until Date L and then on that date he deposited Amount D as a rollover IRA contribution into an account with Company B.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount D was due to an error committed by Company F in not properly advising Taxpayer A that he could roll over the distribution back into a rollover IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payments from IRA X to Taxpayer A constitute substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv). Further no opinion is expressed as to whether the extra payment by Company E to Taxpayer A, or the exercise of this waiver of the 60-day rollover period by Taxpayer A would cause a modification of substantially equal periodic payments within the meaning of Code section 72(t)(4).

Finally, no opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437